U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-A-S-

DATE: NOV. 23, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician in the field of gastroenterology, seeks classification as a member of the professions holding an advanced degree, and asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.
> > >
> > > (ii) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if –

> (I) (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and
>
> (bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

The Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the beneficiary seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the beneficiary's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the beneficiary will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the beneficiary, rather than to facilitate the entry of a beneficiary with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140 on March 20, 2014, at which time he was working as a gastroenterology fellow at [redacted] In an introductory letter, he indicated that his current and ongoing work involves treating patients, teaching medical students and residents, and conducting research, and that he has made significant contributions to the field of gastroenterology.

Documentation supporting the Form I-140 included evidence regarding the Petitioner's credentials, professional memberships, and research activities. The record indicates that he had authored four published articles and several conference presentations at the time of filing, and that his work had been cited 14 times. The Petitioner also submitted letters of recommendation from a colleague and several independent professionals in his field. Each of the letters praised the Petitioner's clinical expertise, particularly in regard to complex endoscopic procedures, and several of the letters also discussed his medical research.[1]

assistant professor at the stated in a January 7, 2014, letter that the Petitioner "has produced landmark research on topics such as irritable bowel syndrome, gastric bypass surgery, hyperemesis, and reflux disease." asserted that the Petitioner "is well known" for his article on irritable bowel syndrome (IBS) in female patients with lupus, in which he found a high prevalence of IBS in these patients and a strong correlation with depression, and he suggested that treating their IBS symptoms would improve their quality of life.

The Petitioner also submitted a January 7, 2014, letter from professor at who stated that the Petitioner "regularly contributes important research to the field." noted that the Petitioner's article on drug malabsorption following bariatric surgery was the first to address that topic. In a January 10, 2014, letter, associate professor at stated that the Petitioner's "numerous research publications and presentations have improved the medical community's understanding of some of the most devastating gastrointestinal conditions."

The Director issued a request for evidence (RFE) on November 19, 2014, instructing the Petitioner to submit additional documentation to establish that the proposed benefit of his work will be national in scope, including further information about his "intended employment." The Director also requested evidence to demonstrate that the Petitioner has a past record of specific prior achievement with some degree of influence on the field as a whole, and to show that he will serve the national interest to a substantially greater degree than an available U.S. worker having the same minimum qualifications. In response, the Petitioner submitted evidence of his additional publications since filing the Form I-140, information about the journals in which he published articles, updated citation data showing 47 citations of his work, and three additional letters from individuals at

Regarding the Director's inquiry about the national scope of his proposed work, the Petitioner described his current and future research, noting that he was recently named leading investigator on a study investigating new treatments for patients with advanced heart failure and intestinal bleeding. He submitted a January 19, 2015, letter from a collaborator on that research, who described his leadership role on the project and the importance of the area of research. An additional letter from the Petitioner's supervisor, described his key

[1] While we discuss only a sampling of these letters, we have reviewed and considered each one.

contributions on previous research projects and attested that he "has [had], and continues to make, an impact on gastroenterologists in the United States and beyond."

The Petitioner's RFE response also included an article about the [redacted] In his cover letter, he noted the high prevalence and cost of gastrointestinal disorders in the United States as further evidence of the national scope of his work. In addition, the Petitioner indicated that his clinical work at [redacted] "a large population of Latinos, African Americans and Arabs, all of which are groups designated by the Federal Government as Medically Underserved Areas."

The Director denied the petition on March 10, 2015, finding in part that the Petitioner did not establish that the benefits of his proposed work would be national in scope under the second prong of the *NYSDOT* national interest analysis. The Director stated that the Petitioner did not show that he "will necessarily continue to be a researcher on completion of his fellowship" rather than practicing clinical gastroenterology or teaching it. The decision also stated that the Petitioner had not demonstrated sufficient impact and influence on his field to meet the third prong of the *NYSDOT* analysis.

On appeal, the Petitioner contends that his previously submitted evidence establishes his eligibility for the benefit sought, and he submits a copy of his response to the Director's RFE.

III. ANALYSIS

The benefit from medical research has national scope, as the results from such research are disseminated to other practitioners through conferences and journals. While Part 6 of the Form I-140 only described his prospective duties as "diagnose and treat patients," the Petitioner has repeatedly indicated his intent to continue conducting medical research in addition to his clinical practice, and he has submitted letters describing ongoing and future research projects in which he is involved. Accordingly, we find that the prospective benefits of the Petitioner's work are national in scope, and we withdraw the director's finding on this issue.

As stated above, the analysis set forth in the third prong of *NYSDOT* requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6. The Petitioner provided letters generally attesting to the importance of his research and stating that he has added to the medical community's understanding of certain diseases. However, neither the letters nor the supporting evidence demonstrate specifically how the petitioner's findings have impacted other researchers or clinical practitioners. For instance, [redacted] stated that the Petitioner is "well known" for his IBS article that included treatment suggestions for lupus patients, he did not attest that those suggestions have been widely implemented in clinical settings. In addition, [redacted] stated that the Petitioner's article on bariatric surgery and drug absorption was significant because it was the first article on that topic, but he did not describe

the subsequent impact of that work on the field of gastroenterology. For these reasons, we find the record insufficient to demonstrate that the petitioner has had some degree of influence on the field as a whole.

Regarding the Petitioner's assertion that he serves in a government-designated "Medically Underserved Area," we note that Section 203(b)(2)(B)(ii) of the Act describes an alternative waiver for certain physicians who agree to work in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. To qualify for that waiver, it is not sufficient for a petitioner to assert that he or she practices in an underserved area. Rather, the waiver is limited to certain physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. The Petitioner has not addressed or attempted to meet these regulatory requirements.

IV. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. The Petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, a petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). Considering the letters and other evidence submitted, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of R-A-S-*, ID# 14495 (AAO Nov. 23, 2015)